

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 17/AIL/Lab./J/2010, dated 2nd February 2010)

NOTIFICATION

Whereas, the Award in I. D. No. 48/2005, dated 16-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Bharathi Mills, Puducherry and Thiru V. J. Rajendiran over non-employment;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the Notification issued in Labour Department's G. O. Ms. No. 20/91/Lab/L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

*Monday, the 16th day of November 2009***I.D. No. 48/2005**

V. J. Rajendiran, Security Sepoy,
S/o. Vellala Vandayar,
No. 31, Nallavadi Maistry Street,
Karamanikuppam,
Mudaliarpet, Pondicherry .. Petitioner

Versus

The General Manager,
Sri Bharathi Mills,
Pondicherry-4 .. Respondent

This industrial dispute coming on 10-11-2009 for final hearing before me in the presence of Thiru V. J. Rajendiran, Advocate for the petitioner, Thiruvalargal L. Sathish, S.Doraisamy and C. Kalyanassoundaram, Advocates for the respondent upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No. 199/AIL/Lab./J/2005, dated 14-10-2005 for adjudication of the following industrial dispute that arose between the management of M/s. Sri Bharathi Mills and Thiru V. J. Rajendiran over his non-employment:

(a) Whether the claim of reinstatement of the worker Thiru V. Rajendiran from the management of M/s. Sri Bharathi Mills, Pondicherry is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any awarded in terms of money, if its can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner in his claim statement would state that he was employed as Security Sepoy in the respondent mill continuously from 1-11-2000 to 15-3-2004. Though he has discharged the duty to utmost satisfaction of the respondent, he was removed from service without any notice on and from 16-3-2004. The petitioner was given the E.S.I. benefits for the period he worked *vide* letter, dated 8-8-2001. The petitioner would further submitted that prior to the present employment he worked as Security Sepoy in Swadeshi Cotton Mills for a period of ten years and due to some dispute he filed I.D.56/93 against Swadeshi Cotton Mills and this court by award, dated 25-2-1998 order for the reinstatement of the petitioner with back wages and other benefits. But the respondent taking advantage of the illness of the petitioner had settled the matter by invoking section 12 (3) of the Industrial Disputes Act and cheated the petitioner. Therefore, the petitioner has prayed to reinstate him in service with full back wages.

3. In the counter statement filed by the respondent it is contended that the petitioner was employed as daily casual worker in Watch and Ward duty and he had never completed 240 days of service in a calendar year. Therefore he is not a workman in continuous service as defined in section 25(B) of the Industrial Disputes Act. Therefore the petitioner is not entitled to claim any relief on the basis of E.S.I. enrollment. It is further contended that the performance of the petitioner was found to be not satisfactory due to his old age and ill temperament with other fellow workers. It is also

contended that in as much as the petitioner is a temporary casual workman he cannot raise any dispute under the Industrial Disputes Act. Hence prayed for the dismissal of the petition.

4. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

5. *On the point:*

On the side of the claim petitioner Exs.A1 and A2 were marked by consent. Ex.A1 is the copy of the Award, dated 25-2-1998 passed by this Court in I.D.56/93. Ex.A2 is the letter sent by the respondent to the Manager of the E.S.I. Local Office, Pondicherry. From Ex.A1 it is seen that the petitioner was earlier employed in Swadeshi Cotton Mills on regular basis and he was removed from employment on bald allegations that he had committed theft of a flask. Subsequently the petitioner raised an industrial dispute before this court and this court by Judgment, dated 25-2-1998 held that the removal of the petitioner from service is not justified and ordered for his reinstatement into service with full back wages. But the petitioner was not reinstated in service. The petitioner in his claim statement would state that M/s. Swadeshi Cotton Mills cheated him by settling the matter under section 12 (3) of the Industrial Disputes Act without giving full benefits as per the Award. The above facts is clear even from Ex.A2, the letter written by the respondent to the Manager, E.S.I. Local Office, wherein he has stated that the petitioner had retired/resigned from Swadeshi Cotton Mills in September 2008 and that he had joined the respondent Mill as a Gate Casual on 1-11-2000. Therefore it is clear that the petitioner is in the employment of the respondent mill from 1-11-2000. The respondent has not denied that the petitioner was removed from service. He would only state that the petitioner did not complete 240 working days in a calendar year and therefore he is not a workman in continuous service and he will not be covered by the Industrial Disputes Act. The respondent has not adduced any oral or documentary evidence before this court to show that the petitioner did not complete 240 days of continuous service in a calendar year. However from Ex.A2 it is clear that the petitioner is in employment from 1-11-2000. The respondent has also not given any satisfactory reason for having removed the petitioner from service of the mill. It is to be noted that M/s. Swadeshi Cotton Mills and M/s. Bharathi Mills

come under National Textile Corporation Limited, and therefore every chances for the respondent/management to remove the petitioner wantonly from service of the respondent mill, probably on the advice of the management of the M/s. Swadeshi Cotton Mills. When the petitioner claims that he is working for 240 days and the management denies the same, it is the duty of the management to establish before this court that the petitioner had not put in 240 days continuous service in a calendar year by producing relevant official records like muster roll/attendance register, pay register etc. Further when there is no valid ground stated by the respondent to justify the removal of the petitioner from service, this court finds that the removal of the petitioner from service of the respondent mill is unjustified.

6. The learned counsel for the respondent vehemently argued that the petitioner should not be considered for reinstatement in service and that simply he is working for 240 days would not give him the right to get observed in the services and he has cited the following case laws:

1. 2002-STPL (LE) 30859-SC in State of Karnataka and another Vs. S.T. Hadimani.
2. 2003-IV-LLJ (Suppl) 779 Bom. In Bharatiya Dak Tar Mazdoor Manch (through its President) Vs. General Manager, Kalyan Telecom District and another.
3. 2002 - IV-LLJ (Suppl)- NOC - 257 - MP. In M.P. State Road Transport Corporation, Gwalior & Ors. Vs. Indra Bahadur Singh and Ors.
4. 2003-IV-LLJ-(Suppl) -MPC-428- Bom. In Union of India, through Divisional Railway Manager, Mumbai Vs. Jairaj N. Shetty.
5. 2002-IV-LLJ-(Suppl) -323- All. In Vinod Singh and Others Vs. State of U.P. and Others.

The reading of the case laws goes to show that they did not apply to the facts of the present case because in this case the respondent has not adduced any evidence to show that the petitioner did not work for 240 days. The point is answered accordingly.

7. In the result, the award is passed to the effect that the non-employment of the petitioner and his dismissal from service is unjustified and is illegal and therefore it is hereby set aside. The management shall reinstate him in the post of Watch and Ward in the position in which the petitioner worked at the time of his removal from service with full back wages and other monetary benefits.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 16th day of November 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner :

Ex. A1.—18-12-2008 Copy of the Award passed in I.D. 56/93, dated 25-2-1998.

Ex. A2.—18-12-2008 Copy of the letter by the respondent Mill to the Manager E.S.I. Local Office, Pondicherry, dated 3-8-2001.

List of exhibits marked for the respondent : Nil

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 21/AIL/Lab./J/2010, dated 3rd February 2010)

NOTIFICATION

Whereas, the Award in I.D. No.24/2003, dated 12-11-2009 of the Labour Court, Puducherry in respect of the industrial dispute raised by Anglo French Textiles National Trade Union Congress, Puducherry against the management of M/s. Anglo French Textiles, Puducherry, over non-employment of its workman Thiru Kumar *alias* Gunasekaran has been received;

Now, therefore, in exercise of the power conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the Notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L., dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A. B.L.,
II Additional District Judge,
Presiding Officer, Labour Court.

Thursday, the 12th day of November 2009

I.D. No. 24/2003

The President,
M/s. Anglo French Textiles Trade
Union Congress,
No. 1/29, Cuddalore Road,
Mudaliarpet, Pondicherry-4 . . . Petitioner

Versus

The General Manager,
M/s. Anglo French Textiles,
Pondicherry . . . Respondent

This industrial dispute coming on 9-11-2009 for final hearing before me in the presence of Thiru M. Nakkeeran, Advocate for the petitioner, Thiru B. Mohandoss, Advocate for the respondent, upon hearing both sides and perusing the case records and having stood over for consideration till this day, this court delivered the following :

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.121/AIL/J/03, dated 1-9-2003 for adjudication of the following industrial dispute that arose between the management of M/s. Anglo French Textiles Mills, Pondicherry and its workman Thiru Kumar *alias* Gunasekaran over his non-employment:

(a) Whether the non-employment of Thiru Kumar *alias* Gunasekaran by the management of Anglo French Textiles Mills, Pondicherry is justified?

(b) If not, to what relief, he is entitled?

(c) To compute the relief if any, awarded in terms of money, if it can be so computed?

2. The petitioner in his claim statement has averred as follows:

The petitioner is his the National Trade Union Congress appearing for the workman Kumar *alias* Gunasekaran who was employed in the Processing

Department of 'B' Unit of Anglo French Textiles Mills, Pondicherry. The petitioner joined in the service of the Mill on 20-1-1979. A charge sheet, dated 30-7-1996 was issued to the petitioner under Clause 25(f) of the Standing Orders of the Mills dismissing the petitioner from service on the charge of misconduct of absenting himself from work for more than eight consecutive working days from 22-6-1996 onwards without any intimation or prior permission. The petitioner approached the respondent mill on 12-7-1996 with medical certificate, dated 22-6-1996 issued by a qualified doctor to the effect that the petitioner was suffering from giddiness and cervical spondilitis and that he was advised for rest and that he was fit to resume work on 11-7-1996. When the petitioner went to join duty on 11-7-1996 he was refused entry into the work place on the ground that he was placed on suspension and enquiry would be conducted. The petitioner received notice from the respondent mill informing him that domestic enquiry into the charges levelled against him would be conducted on 28-9-1998 but on that date the enquiry was adjourned to 9-10-1998 for the reasons that the Enquiry Officer was on leave. On 9-10-1998 when the petitioner appeared for enquiry, the respondent mill obtained his signatures on some papers stating that the domestic enquiry was only formal and no action would be taken against him and that he would be allowed to resume work. Believing the respondents, the petitioner also signed the papers. But on 23-10-1998 the respondent issued a show cause notice asking the petitioner to explain why he should not be removed from service for proved misconduct of continuous absence. Subsequent to that the petitioner was also dismissed from service on 17-11-1998. Aggrieved by the said dismissal order, the petitioner preferred an application before the Labour Officer (Conciliation) and as the conciliation failed, the Labour Officer sent failure report to the Secretary to Government (Labour) by proceedings, dated 2-5-2003 and on the basis of which the present industrial dispute has been referred to this Court.

3. In the counter statement the respondent has denied that the petitioner was suffering from ill health. It is contended that charge sheet, dated 30-7-1996 was issued to the delinquent workman under the Standing Order 25(f) for remaining continuously absent for more

than 8 consecutive days from 22-6-1996 without any intimation or prior permission. The charge sheet issued to the workman was received by him on 19-8-1996 and a copy of the same was also affixed on the mill notice-board. The workman failed to give any explanation and did not turn up to the mill till September 1998. An enquiry notice, dated 28-9-1998 was sent to the delinquent employee by registered post with acknowledgment due fixing the date of enquiry as 7-10-1998. A detailed domestic enquiry was held on 9-10-1998 and in which the delinquent workman admitted his continuous absence without intimation from 22-6-1996 in the presence of Enquiry Officer Mr. R. Chandrasekaran and Mr. Shanmugam, the representative of the management. The Enquiry Officer found the delinquent workman guilty of the charge. A second show cause notice was issued to the delinquent workman asking him to explain why he should not be dismissed from service for the proved misconduct of continuous unauthorised absence for about 27 months. As the workman failed to submit his explanation, the respondent passed an order of termination of his service *vide* Order, dated 19-11-1998. It is submitted that when the petitioner admitted the charges on his own volition, he is estopped from stating that the termination is illegal. The respondent has prayed to dismiss the claim of the workman.

4. *Now the point for determination is:*

Whether the delinquent workman absented himself from work for more than 27 months without any intimation and whether the termination of service of the delinquent workman by the respondent mill is justified?

5. *On the point:*

Both sides dispensed with oral evidence. However, on the side of the respondent Exs.B1 to B13 were marked by consent.

6. The respondent in paragraph 5 of the counter statement would state that the delinquent workman absented himself from work without any intimation or prior permission for nearly 27 months from 22-6-1996 and though he was issued with a charge sheet, dated 30-7-1996 through registered post on 14-8-1996, the delinquent workman failed to offer any explanation and he did not turn up to the mill till September 1998. The respondent has marked the copy of the charge sheet No. 206, dated 30-7-1996 as Ex.B1. Though Ex.B1 is dated 30-7-1996, even according to the respondent the original of Ex.B1 has been sent by registered post with

acknowledgment due on 14-8-1996 and the same was received by the delinquent workman on 19-8-1996 *i.e.* nearly after a lapse of 15 days. The respondent has not adduced any reason for the delay in dispatching the charge sheet to the petitioner. Further when the respondent has chosen to mark the charge sheet as Ex.B1 he has not chosen to produce the postal acknowledgment card before this court to show that the charge sheet was really sent to the delinquent workman on 14-8-1996 and the same was received by him on 19-8-1996. Under the above circumstances the contention of the respondent that the delinquent workman was issued with the charge sheet but he ailed to offer any explanation is only a hard pill to swallow.

7. The delinquent workman would state that he approached the mill on 12-7-1996 with medical certificate, dated 22-6-1996 issued by a qualified doctor explaining his illness and fitness certificate, dated 11-7-1996 and that the respondent mill received the medical certificate but prevented him from entering into the mill stating that he is under suspension and enquiry would be conducted. The perusal of the records would go to show that enquiry notice under Ex.B2 was issued only on 28-9-1998 *i.e.* more than two years after issuance of the charge sheet under Ex.B1. Ex.B2 is followed by Ex.B3 and Ex.B4, enquiry proceedings and the enquiry report both dated 9-10-1998. As admitted by the respondent in paragraph 5 of the counter statement enquiry was conducted by the Enquiry Officer Mr. R. Chandrasekaran in the presence of delinquent employee and one Mr. Shanmugam, the representative of the management. Therefore, it is clear that the petitioner alone appeared for the domestic enquiry and he was not given any opportunity to engage any expert to defend his case. The delinquent employee K. Kumar *alias* Gunasekaran would state that the respondent mill obtained his signatures on several papers stating that domestic enquiry was only formal and no action would taken against him and that he would be allowed to resume work. The respondent has not adduced any tangible evidence to show that the admission of the petitioner was voluntary and that he was not misrepresented or any undue influence on their part. Further the respondent has not offered any explanation as to why the respondent mill remained silent for more than two years from 30-7-1996 to 28-9-1998. According to the petitioner he was suspended from service and he was not permitted to enter into the mill. This has not been denied by the respondent mill. Only because the

respondent mill has suspended the petitioner from service, they had remained silent for over two years till 28-9-1998 and ultimately issued dismissal order on 19-11-1998. Under the above circumstances it is not fair on the part of the respondent mill to state that it was the petitioner alone who had absented himself from work from 22-6-1996 till 28-9-1998 without intimation for 27 months. The manner in which enquiry has been conducted under Ex.B5 is also not proper and the petitioner has not been given due opportunities to put forth his case in writing and he has not been examined properly and as submitted by the petitioner the management appears to have obtained his signature under misrepresentation or undue influence. From the evidence available on record this court comes to the conclusion that the petitioner had absented himself from work from 22-6-1996 to 11-7-1996 as he was suffering from giddiness and cervical spondilitis and it is not fair or justified to say that the petitioner had abstained from work for 27 months. When the respondent mill has failed to establish that Ex.B1 charge sheet was issued to the petitioner and further when the respondent was silent for over two years and the manner in which domestic enquiry has been conducted without proper evidence to show that the petitioner had voluntarily admitted his absence for 27 months, goes to show that the management has approached the case in vindictive manner with the sole motive of removal of the petitioner from service and thereby the principles of natural justice have been violated.

This point is answered accordingly in favour of the petitioner.

8. In the result industrial dispute is allowed and the order passed by the respondent terminating the services of the petitioner from the respondent mill is hereby set aside. The respondent is hereby directed to reinstate the petitioner in service with full back wages and all attendant benefits within three months from the date of the order. However, he is not entitled to get pay and allowances for 8 days.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 12th day of November 2009.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Puducherry.

List of witnesses examined for the petitioner : Nil

List of witnesses examined for the respondent : Nil

List of exhibits marked for the petitioner : Nil

List of exhibits marked for the respondent :

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| Ex.B1.— 13-3-2008 | Copy of the charge sheet, dated 30-7-1996. |
| Ex.B2.— 13-3-2008 | Copy of the enquiry notice, dated 28-9-1998. |
| Ex.B3.— 13-3-2008 | Copy of the enquiry proceeding, dated 9-10-1998. |
| Ex.B4.— 13-3-2008 | Copy of the enquiry report, dated 9-10-1998. |
| Ex.B5.— 13-3-2008 | Copy of the second show cause notice, dated 23-10-1998. |
| Ex.B6.— 13-3-2008 | Copy of the dismissal order of the petitioner, dated 19-11-1998. |
| Ex.B7.— 13-3-2008 | Copy of the reply notice by the petitioner to the respondent, dated 19-11-1998. |
| Ex.B8.— 13-3-2008 | Copy of the letter given by the union, dated 10-1-2002 to the Labour Officer (Conciliation). |
| Ex.B9.— 13-3-2008 | Copy of the reply given by the respondent to the Labour Officer (Conciliation), dated 12-2-2002. |
| Ex.B10.— 13-3-2008 | Copy of the letter given by the union, dated 15-5-2002 to the Labour Officer (Conciliation). |
| Ex.B.11—13-3-2008 | Copy of the letter given by the union, dated 19-6-2002 to the Labour Officer (Conciliation). |
| Ex.B12.—13-3-2008 | Copy of the failure report given by the Labour Officer (Conciliation), dated 5-7-2002. |
| Ex.B13.—13-3-2008 | Copy of the letter by the Deputy Labour Commissioner to the Secretary to Government (Labour), Pondicherry, dated 2-5-2003. |

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Puducherry.

GOVERNMENT OF PUDUCHERRY
CHIEF SECRETARIAT (ART AND CULTURE)

(G. O. Ms. No.10, dated 27th January 2010)

ORDER

In supersession of the G.O. Ms. No. 105, dated 16-10-2007 and G.O. Ms. No. 123, dated 28-11-2007 of the Chief Secretariat (Art and Culture), Puducherry, His Excellency the Lieutenant-Governor, Puducherry, is pleased to reconstitute the committee with the following members for the selection of eminent persons in the field of "Literature, Music, Drama, Dance, Painting and Sculpture and Folk Arts" for conferment of the title of "Puduvai Kalaimamani" under the scheme being implemented by the Department of Art and Culture in the Union territory of Puducherry.

1. Hon'ble Minister for Art and Culture . . Chairman
2. Special Secretary to Government . . Member (Art and Culture).
3. The Director, Puducherry Institute of . . Member Linguistics and Culture, Puducherry.
4. The Principal, Bharathiar . . Member Palkalaikoodam, Puducherry.
5. Kalaimamani M. Sithan *alias* . . Member Radhakrishnan (Literature).
6. Kalaimamani Pattabiraman (Music) . . Member
7. Kalaimamani K. Murugan (Dance) . . Member
8. Kalaimamani Karai Subbaiah (Drama) . . Member
9. Kalaimamani V.K. Munusamy . . Member (Painting and Sculpture).
10. Kalaimamani K. Kesavasamy (Folk Arts) . . Member
11. The Director, Department of Art and . . Member— Culture. Secretary.

2. The term of the selection committee shall be three years from the date of issue of the Government order.

(By order of the Lieutenant-Governor)

R. SMITHA,
Joint Secretary to Government (Education).